IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No.

JOHN LASCARIS, individually and as Commissioner of the Onondaga County Department of Social Services,

Appellant,

—against—

OSSIE BOWENS, LURETHA GADDIS, WILLA JEAN MANNING, ANNIE BELL MCALLISTER and RUTH MICKLE, individually and on behalf of all other persons similarly situated,

Appellees.

JURISDICTIONAL STATEMENT

Appellant John Lascaris, Commissioner of the Onondaga County Department of Social Services, appeals from a judgment and order of the United States District Courts for the Southern and Northern Districts of New York, entered on October 14, 1969 in two consolidated cases disposed of in the same decision, enjoining any further application of Section 139-a of the New York Social Services Law on the grounds that the statute is unconstitutional and ordering that retroactive benefits be given to each member of the class which appellees seek to represent, dating back to the time of first application.

Appellant does not appeal from that portion of the decision

below, which held that Section 121 of the New York Social Services Law is in all respects constitutional.

Opinion Below

The opinion of the Northern and Southern District Courts is not yet reported and is reproduced in appellant Wyman's Jurisdictional Statement as Appendix A. The order of these District Courts is reproduced in appellant Wyman's Jurisdictional Statement as Appendix B.

Jurisdiction

The judgment and order of the United States District Courts for the Northern and Southern Districts was entered on October 14, 1969. Appellant's Notice of Appeal was filed on November 5, 1969. The jurisdiction of this Court to review the instant case is conferred by 28 U. S. C. Section 1253.

Statute Involved

Social Services Law, Section 139-a:

"Special provisions to avoid abuse of assistance and care.

1. Any person who shall apply for home relief or aid to dependent children within one year after arrival in this state, shall be presumed to have come into the state for the purpose of receiving public assistance or care and the social services official where application is made, shall deny public assistance and care to such applicant unless such applicant shall establish by clear and convincing proof that the purpose of his or her entry was not for the purpose of securing public assistance and care in this state.

In addition to complying with the foregoing provisions, the applicant shall also submit with his or her application a certificate from the appropriate local employment office of the State Department of Labor issued within a two week period from the date of his or her application stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent work of any kind to which the applicant could properly be referred by such office, taking into consideration only his or her physical and mental capacity without reference to his or her customary occupation or acquired skill.

2. The social services official shall in every case complete his investigation and make his determination of the application under this section not more than thirty days after receipt of the application."

Questions Presented

1. Does this Court's ruling in Shapiro v. Thompson, 394 U.S. 618 (1969), unequivocally bar New York State from denying welfare benefits to otherwise eligible public assistance applicants whose sole motive in coming to the State was to receive such benefits?

2. Did the Court below err in ordering that retroactive benefits be paid to the entire class of public assistance recipients which appellees seek to represent, up to the time of first application for each individual, in view of this Court's rulings establishing that state statutes are presumed to be constitutional until judicially declared to be invalid?

Statement of the Case

Appellee Ossie Bowens, proceeding by order to show cause, instituted in the United States District Court for the Northern District of New York an action denominated as a class action, for a temporary restraining order and a preliminary and permanent injunction to enjoin the enforcement of §139-a of the New York State Social Services Law, which mandates denial of welfare to public assistance applicants who have come to the State for the sole motive of receiving welfare benefits. Plaintiff also sought the convening of a statutory three-judge court to hear the application. The order to show cause was dated July 25, 1969.

By order dated August 11, 1969 the Hon. Edmund Port of the United States District Court for the Northern District of New York ordered that a three-judge District Court be convened to consider appellee's claim that §139-a contravened her right to equal protection of the laws and her right to travel. The statutory three-judge court which was appointed consisted of Circuit Judge Sterry Waterman, Judge Port and Southern District Judge Walter Mansfield sitting by designation in the Northern District.

In an order dated August 11, 1969, the cases of Bowens v. Wyman, et al. and Gaddis v. Wyman, et al., another case involving the same statute were consolidated, since they had been assigned to the same three-judge panel. Appellant Lascaris answered the complaint of appellee Bowens on August 29, 1969.

The statutory three-judge court filed its opinion on September 22, 1969 finding that Section 139-a is unconstitutional upon its face. Although New York has consistently rejected residence laws in the field of public assistance as repugnant to New York State policy, the Court below came to the conclusion that the legislative history of Section 139-a

showed that its purpose was to discourage indigents from migrating into New York. It was held that this Court's decision in Shapiro v. Thompson, precluded New York from considering motive in coming into the State in its allocation of public assistance resources and its administration of New York's work incentive program. The Court did not reach the question of whether Section 139-a violates the Social Security Act (42 U. S. C. Section 601 et seq.) and the regulations promulgated thereunder, as alleged by appellees. As to Section 121 of the New York Social Services Law, the Court granted appellant's motion to dismiss the complaint insofar as it was based upon the alleged invalidity of the section.

The District Court refused on October 24, 1969, to grant a stay of the order and Justice John M. Harlan also declined on November 5, 1969, to stay the judgment below pending this appeal. In requesting such a stay the appellant had pointed out that the retroactive class order granted by the Court below made the unwarranted assumption that Section 139-a was void ab initio.

ARGUMENT

The instant appeal presents several substantial questions of law requiring plenary consideration by this Court.

The Court below was in error in interpreting this Court's decision in Shapiro v. Thompson, 394 U. S. 618 (1969) as precluding New York from considering motive in coming to the State in its allocation of public assistance resources and in its administration of its work incentive program.

A. The appellant adopts and incorporates by reference Number 1, Subdivisions A, B and C of appellant Wyman's argument.

B. The decision below held that this Court's ruling in Shapiro v. Thompson, 394 U.S. 618 (1969), unequivocally bars New York State from denying welfare benefits to otherwise eligible welfare applicants whose sole motive in coming to the State was to receive such benefits. The District Court erred when it held that even if Section 139-a of the Social Services Law of New York is construed as a sole motive statute Shapiro v. Thompson, dictates that it be declared unconstitutional on its face. It is appellant's contention that this Court never decided the question of sole motive for this Court stated in Shapiro at page 631:

> "Alternatively, appellants argue that even if it is impermissible for a State to attempt to deter the entry of all indigents, the challenged classification may be justified as a permissible state attempt to discourage those indigents who would enter the State solely to obtain larger benefits. We observe first that none of the statutes before us is tailored to serve that objective. Rather, the class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits...."

The District Court rejected appellant's argument that the State had a legally recognizable and a valid and compelling interest in encouraging self-support and establishing a policy which would require any parent who is physically able to rely upon employment rather than public assistance to provide the family income. The Court's order has the effect of creating a constitutional right to public assistance which must be paid to a constantly increasing class of persons whose sole motive for coming to this State is the right to receive a larger welfare check. This decision virtually eliminates the priority given by the State to its work incentive program, may cause further hardship to those already receiving public assistance and creates a fiscal crisis for local municipalities. The decision is, therefore, of extreme urgency to the State of New York and to local municipalities.

The appellant has always interpreted Section 139-a of the Social Services Law as a sole motive statute and has applied the statute to deny assistance to those who have come to the State for the sole purpose of receiving welfare benefits. Since the statute was enacted in 1961, statistics kept in Onondaga County indicate that several thousand persons have applied for welfare assistance within a relatively short period of time after their arrival in the State and that over ninety-five percent of those applying were approved and did receive public assistance. Less than five percent of those applying were denied assistance on the basis of Section 139-a, the said denial being based upon proof that the applicant came to this State for the sole purpose of receiving welfare benefits. Since May 1, 1969, the date the amended statute took effect, only sixty-four applicants have been denied assistance. It is, therefore, clear that the appellant has not merely made statements of policy, but has acted and applied the statute as a sole motive statute and has denied assistance only to those coming to this State for the sole purpose of receiving welfare benefits.

CONCLUSION

For the foregoing reasons it is respectfully requested that this Court note probable jurisdiction and grant plenary consideration to the instant appeal.

Dated: Syracuse, New York, November 19, 1969.

Respectfully submitted,

LEONARD C. KOLDIN
Onondaga County Welfare Attorney
Attorney for Appellant,
Commissioner Lascaris

SUPREME COURT OF THE UNITED STATES

October Term, 1969

WYMAN, INDIVIDUALLY AND AS COMMISSIONER OF NEW YORK DEPT. OF SOCIAL SERVICES *v.* BOWENS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT AND SOUTHERN DISTRICT OF NEW YORK

No. 866. Decided February 24, 1970*

PER CURIAM.

The motion of the appellees for leave to proceed *in forma pauperis* is granted. The motions to affirm are granted and the judgments are affirmed. *Shapiro* v. *Thompson*, 394 U. S. 618 (1969).

THE CHIEF JUSTICE, MR. JUSTICE BLACK, and MR. JUSTICE HARLAN are of the opinion that probable jurisdiction should be noted and the cases set for oral argument.

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*Together with No. 874, *Lascaris, Individually and as Commissioner of Onondaga County Dept. of Social Services* v. *Bowens*. Appeal from the United States District Court for the Northern District of New York.